

FCC 603	FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control	Approved by OMB 3060 - 0800 See instructions for public burden estimate Submitted 05/04/2000 at 05:37PM File Number: 0000117778
----------------	---	---

1) Application Purpose: Transfer of Control	
2a) If this request is for an Amendment or Withdrawal, enter the File Number of the pending application currently on file with the FCC.	File Number:
2b) File numbers of related pending applications currently on file with the FCC:	

Type of Transaction

3a) Is this a <i>pro forma</i> assignment of authorization or transfer of control? No
3b) If the answer to Item 3a is 'Yes', is this a notification of a <i>pro forma</i> transaction being filed under the Commission's forbearance procedures for telecommunications licenses?
4) For assignment of authorization only, is this a partition and/or disaggregation?
5) Does this filing request a waiver of the Commission's rules? No
6) Are attachments being filed with this application? Yes
7a) Does the transaction that is the subject of this application also involve transfer or assignment of other wireless licenses held by the assignor/transferor or affiliates of the assignor/transferor(e.g., parents, subsidiaries, or commonly controlled entities) that are not included on this form and for which Commission approval is required? Yes
7b) Does the transaction that is the subject of this application also involve transfer or assignment of non-wireless licenses that are not included on this form and for which Commission approval is required? Yes

Transaction Information

8) How will assignment of authorization or transfer of control be accomplished? Sale or other assignment or transfer of stock If required by applicable rule, attach as an exhibit a statement on how control is to be assigned or transferred, along with copies of any pertinent contracts, agreements, instruments, certified copies of Court Orders, etc.
9) The assignment of authorization or transfer of control of license is: Voluntary

Licensee/Assignor Information

10a) Taxpayer Identification Number:			10b) SGIN: 000		
11) First Name (if individual):	MI:	Last Name:	Suffix:		
12) Entity Name (if not an individual): Abilene SMSA Limited Partnership					
13) Attention To: Kellye Abernathy					
14) P.O. Box:	And / Or	15) Street Address: 17330 Preston Rd Ste 100A			
16) City: Dallas	17) State: TX	18) Zip: 75252			
19) Telephone Number: (972)733-2092			20) FAX: (972)733-8141		
21) E-Mail Address: ka8805@txmail.sbc.com					

22) Race, Ethnicity, Gender of Assignor/Licensee (Optional)

Race:	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
Ethnicity:	Hispanic or Latino:	Not Hispanic or Latino:			
Gender:	Female:	Male:			

Transferor Information (for transfers of control only)

23a) Taxpayer Identification Number:			23b) SGIN: 000		
24) First Name (if individual):	MI:	Last Name:	Suffix:		
25) Entity Name (if not an individual): SBC Communications Inc.					
26) P.O. Box:	And / Or	27) Street Address: 175 East Houston			
28) City: San Antonio	29) State: TX		30) Zip: 78205		
31) Telephone Number: (210)351-3476			32) FAX: (210)351-3257		
33) E-Mail Address: dwatts@corp.sbc.com					

Name of Transferor Contact Representative (if other than Transferor) (for transfers of control only)

34) First Name: Wayne	MI:	Last Name: Watts	Suffix:		
35) Company Name: SBC Communications Inc.					
36) P.O. Box:	And / Or	37) Street Address: 175 East Houston			
38) City: San Antonio	39) State: TX		40) Zip: 78205		
41) Telephone Number: (210)351-3476			42) FAX: (210)351-3257		
43) E-Mail Address: dwatts@corp.sbc.com					

Assignee/Transferee Information

44) The Assignee is a(n): Limited Liability Corporation					
45a) Taxpayer Identification Number:			45b) SGIN: 000		
46) First Name (if individual):	MI:	Last Name:	Suffix:		
47) Entity Name (if other than individual): Alloy LLC					
48) Name of Real Party in Interest:			49) TIN:		
50) Attention To: Charles Featherstun					
51) P.O. Box:	And / Or	52) Street Address: 1155 Peachtree St., N.E., Ste. 1700			
53) City: Atlanta	54) State: GA		55) Zip: 30309		
56) Telephone Number: (404)249-3855			57) FAX: (404)249-5664		
58) E-Mail Address: charles.featherstun@bellsouth.com					

Name of Assignee/Transferee Contact Representative (if other than Assignee/Transferee)

59) First Name: Charles	MI:	Last Name: Featherstun	Suffix:		
60) Company Name:					
61) P.O. Box:	And / Or	62) Street Address: 1155 Peachtree St., N.E., Ste. 1700			
63) City: Atlanta	64) State: GA		65) Zip: 30309		
66) Telephone Number: (404)249-3855			67) FAX: (404)249-5664		
68) E-Mail Address: charles.featherstun@bellsouth.com					

Alien Ownership Questions

69) Is the Assignee or Transferee a foreign government or the representative of any foreign government?	No
70) Is the Assignee or Transferee an alien or the representative of an alien?	No
71) Is the Assignee or Transferee a corporation organized under the laws of any foreign government?	No
72) Is the Assignee or Transferee a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	No
73) Is the Assignee or Transferee directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? If 'Yes', attach exhibit explaining nature and extent of alien or foreign ownership or control.	No

Basic Qualification Questions

74) Has the Assignee or Transferee or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission? If 'Yes', attach exhibit explaining circumstances.	No
75) Has the Assignee or Transferee or any party to this application, or any party directly or indirectly controlling the Assignee or Transferee, or any party to this application ever been convicted of a felony by any state or federal court? If 'Yes', attach exhibit explaining circumstances.	No
76) Has any court finally adjudged the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? If 'Yes', attach exhibit explaining circumstances.	No
77) Is the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee currently a party in any pending matter referred to in the preceding two items? If 'Yes', attach exhibit explaining circumstances.	Yes

78) Race, Ethnicity, Gender of Assignee/Transferee (Optional)

Race:	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
Ethnicity:	Hispanic or Latino:	Not Hispanic or Latino:			
Gender:	Female:	Male:			

Assignor/Transferor Certification Statements

1) The Assignor or Transferor certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for <i>pro forma</i> assignments and transfers by telecommunications carriers. See <i>Memorandum Opinion and Order</i> , 13 FCC Rod. 6293(1998).			
2) The Assignor or Transferor certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.			
79) Typed or Printed Name of Party Authorized to Sign			
First Name: Wayne	MI:	Last Name: Watts	Suffix:
80) Title: VP & Assistant General Counsel			
Signature: Wayne Watts		81) Date: 05/04/00	

Assignee/Transferee Certification Statements

1) The Assignee or Transferee certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for <i>pro forma</i> assignments and transfers by telecommunications carriers. See <i>Memorandum Opinion and Order</i> , 13 FCC Rod. 6293 (1998).			
2) The Assignee or Transferee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.			
3) The Assignee or Transferee certifies that grant of this application would not cause the Assignee or Transferee to be in violation of any pertinent cross-ownership, attribution, or spectrum cap rule. "If the applicant has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request."			
4) The Assignee or Transferee agrees to assume all obligations and abide by all conditions imposed on the Assignor or Transferor under the subject authorization(s), unless the Federal Communications Commission pursuant to a request made herein otherwise allows, except for liability for any act done by, or any right accrued by, or any suit or proceeding had or commenced against the Assignor or Transferor prior to this assignment.			
5) The Assignee or Transferee certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.			
6) The Assignee or Transferee certifies that neither it nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance. See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.			
7) The applicant certifies that it either (1) has an updated Form 602 on file with the Commission, (2) is filing an updated Form 602 simultaneously with this application, or (3) is not required to file Form 602 under the Commission's Rules.			
82) Typed or Printed Name of Party Authorized to Sign			
First Name: Wayne	MI:	Last Name: Watts	Suffix:
83) Title: Secretary			
Signature: Wayne Watts		84) Date: 05/04/00	
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).			

Authorizations To Be Assigned or Transferred

85) Call Sign	86) Location Number	87) Path Number (Microwave only)	88) Lower or Center Frequency (MHz)	89) Upper Frequency (MHz)	90) Constructed Yes / No
KNKA559					
WML933					
WML934					
WML936					
WMM436					

FCC Form 603 Schedule A	Schedule for Assignments of Authorization and Transfers of Control in Auctioned Services	Approved by OMB 3060 - 0800 See instructions for public burden estimate
----------------------------	---	--

Assignments of Authorization**1) Assignee Eligibility for Installment Payments** (for assignments of authorization only)

Is the Assignee claiming the same category or a smaller category of eligibility for installment payments as the Assignor (as determined by the applicable rules governing the licenses issued to the Assignor)?
If 'Yes', is the Assignee applying for installment payments?

2) Gross Revenues and Total Assets Information (if required) (for assignments of authorization only)

Refer to applicable auction rules for method to determine required gross revenues and total assets information

Year 1 Gross Revenues (current)	Year 2 Gross Revenues	Year 3 Gross Revenues	Total Assets:
------------------------------------	-----------------------	-----------------------	---------------

3) Certification Statements**For Assignees Claiming Eligibility as an Entrepreneur Under the General Rule**

Assignee certifies that they are eligible to obtain the licenses for which they apply.
--

For Assignees Claiming Eligibility as a Publicly Traded Corporation

Assignee certifies that they are eligible to obtain the licenses for which they apply and that they comply with the definition of a Publicly Traded Corporation, as set out in the applicable FCC rules.
--

For Assignees Claiming Eligibility Using a Control Group Structure

Assignee certifies that they are eligible to obtain the licenses for which they apply.
Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

For Assignees Claiming Eligibility as a Very Small Business, Very Small Business Consortium, Small Business, or as a Small Business Consortium

Assignee certifies that they are eligible to obtain the licenses for which they apply.
Assignee certifies that the applicant's sole control group member is a pre-existing entity, if applicable.

For Assignees Claiming Eligibility as a Rural Telephone Company

Assignee certifies that they meet the definition of a Rural Telephone Company as set out in the applicable FCC rules, and must disclose all parties to agreement(s) to partition licenses won in this auction. See applicable FCC rules.
--

Transfers of Control**4) Licensee Eligibility** (for transfers of control only)

As a result of transfer of control, must the licensee now claim a larger or higher category of eligibility than was originally declared?
If 'Yes', the new category of eligibility of the licensee is:

Certification Statement for Transferees

Transferee certifies that the answers provided in Item 4 are true and correct.
--

Attachment List

Attachment Type	Date	Description	Contents
Other	05/04/00	Exhibit 1	17562230.0.pdf
Other	05/04/00	Exhibit 1 - Attachment A	17562235.0.pdf
Other	05/04/00	Exhibit 1 - Attachment B	17562238.0.pdf
Other	05/04/00	Exhibit 1 - Attachment C	17562247.0.pdf
Other	05/04/00	Exhibit 1 - Attachment D	17562249.0.pdf
Other	05/04/00	Exhibit 2	17562251.0.pdf
Other	05/04/00	Exhibit 3	17562259.0.pdf

**DESCRIPTION OF TRANSACTION, PUBLIC INTEREST
SHOWING AND RELATED DEMONSTRATIONS**

I. INTRODUCTION

These applications seek Commission approval for the transfer of control of certain FCC authorizations held by subsidiaries and affiliates of SBC Communications Inc. (“SBC”) and BellSouth Corporation (“BellSouth”). By this transaction, SBC and BellSouth will transfer virtually all of their current interests in domestic mobile wireless operations to a newly created limited liability company (“Newco”) which will thereby become the foundation for the creation of the sixth national wireless carrier.¹ Newco will be controlled equally by SBC and BellSouth. A total of 126 applications are being filed in connection with this transaction. Attached hereto, as Attachments A and B, are the Affidavits of Stan Sigman, Group President-National Operations of SBC National Operations (“Sigman Aff.”), and Mark Feidler, President of BellSouth Mobility Inc (“Feidler Aff.”) in support of these applications.

This transaction – like other similar major wireless consolidations that the Commission has recently approved – is driven by customer demands that are fundamentally changing the market for wireless services. Meeting customer demands for both nationwide pricing and nationwide service requires a national footprint.² In

¹ SBC, BellSouth and Newco are jointly referred to herein as “Applicants.”

² See Sigman Aff. ¶¶ 4-6; Feidler Aff. ¶¶ 2-5.

particular, the demand for single rate, nationwide pricing plans is unmistakable. For example, AT&T's single rate plan attracted a million new customers in 1999,³ and all of the other national carriers are offering like plans. Customers are also insisting on consistent service features on a nationwide basis for both voice and data services. Five major carriers now have the near national, facilities-based footprint needed to meet these demands. For example, both Nextel and Verizon Wireless serve 96 of the top 100 markets, and Verizon's footprint covers 232 million people. Sprint PCS's authorizations cover approximately 270 million people in all 50 states, while AT&T and its partners have licenses covering 94% of the U.S. population. VoiceStream now possesses licenses that cover a population greater than 220 million people.

The Commission has recently found, in approving the transactions involving Bell Atlantic/Vodafone/AirTouch and VoiceStream/Omnipoint/Aerial, that the creation of a CMRS competitor with a national footprint substantially benefits consumers and is procompetitive. That is exactly what this transaction will do, and, thus, the same conclusion holds.

Moreover, in contrast to previous transactions, there will be only one cellular/PCS overlap here requiring a brief divestiture waiver.

Finally, the qualifications of SBC and BellSouth to control these authorizations through Newco are beyond dispute.

³ See AT&T Corp., SEC Form S-3, Amendment 1 at 39 (filed Mar. 28, 2000) ("AT&T S-3").

Based on the foregoing, and because Newco's competition is already up and operating, Applicants respectfully request expeditious action on these applications.

**II. DESCRIPTION OF THE APPLICANTS AND THEIR EXISTING
BUSINESSES**

A. SBC

SBC is a holding company whose affiliates provide wireline and wireless voice and data communications, paging, high-speed Internet access and messaging, cable and satellite television, security services and telecommunications equipment, as well as directory advertising and publishing services. In the United States, SBC's affiliates currently serve over 90 million voice grade equivalent lines, and SBC's CMRS affiliates provide cellular and PCS service to a population of 120 million persons, both within the 13 states where SBC's affiliates are incumbent local exchange carriers and elsewhere. SBC's CMRS affiliates currently serve approximately 11.2 million cellular and PCS customers.

B. BellSouth

BellSouth is a holding company whose affiliates provide telecommunications services, Internet, data and e-commerce applications, wireless communications (including long distance), entertainment services, and online and directory advertising to more than 39 million customers in 19 countries. BellSouth provides domestic cellular and PCS operations to a population of approximately 57 million in twelve states. Its domestic wireless customers exceeded 5.3 million at year-end 1999. BellSouth's nationwide

wireless data service – BellSouth Mobile Data, Inc. (“BSMD”) – reaches 93 percent of the urban business population in the U.S.

III. DESCRIPTION OF THE TRANSACTION

A. The Wireless Properties Being Contributed to Newco

This transaction combines the current domestic mobile wireless operations of SBC and BellSouth. Both plan to contribute to Newco almost all of their substantial cellular and PCS businesses. BellSouth also will contribute authorizations for 900 MHz SMR services that are used to operate its mobile data network. The other authorizations to be contributed to Newco, for fixed microwave services, experimental services, private land mobile radio services and international Section 214 authorizations, are all incidental to the CMRS businesses being contributed.

Authorizations relating to paging, wireless video and fixed wireless services are not part of the transaction and are not being contributed. Nor are microwave and other wireless authorizations that are incidental to lines of businesses (e.g., landline local exchange service) that are not part of the venture. In addition, as discussed below, certain CMRS authorizations that will be divested prior to the closing of this transaction (in order to ensure that the Applicants comply with the Commission’s cellular cross-ownership and spectrum cap rules, or for other reasons) will not be transferred to Newco. Finally, due to contractual and other restrictions involving a handful of licenses owned or attributable to

SBC and BellSouth, the interests in those licenses will not be contributed to Newco at this time.⁴

B. Newco's "Footprint"

The purpose of this transaction is simple and straightforward: to expand the wireless footprints of SBC and BellSouth in order to enhance their ability to compete effectively with the current five national wireless carriers. Today, SBC's wireless operations cover approximately 120 million pops, and BellSouth's operations cover approximately 57 million pops. By contrast, each of the five existing national wireless carriers has licenses covering areas exceeding 200 million pops, and three – AT&T, Sprint PCS and Nextel – have 250 million pops or more.⁵ Combining SBC's and

⁴ BellSouth is not contributing at this time its interests in cellular and microwave licenses in the Los Angeles, Houston and Galveston MSAs, as well as in Texas RSA 21. Those interests are discussed in detail in Part VI.B., below. In addition, SBC is not contributing its interests in cellular and microwave licenses in Arkansas RSAs 1-8, 10 and 12, or in the Pittsburgh, Pine Bluff, Arkansas and Worcester, Massachusetts MSAs. Finally, as discussed in Part VI.A below, SBC will not contribute its interests in certain cellular and microwave licenses, as well as a PCS license, formerly controlled by Radiofone, Inc. Those interests will be divested before closing.

⁵ See VoiceStream Wireless Corporation, *VoiceStream: About Us: Company Overview*, available at <<http://www.voicestream.com/about/company.htm>> (visited Apr. 14, 2000); Vodafone AirTouch Plc and Bell Atlantic Corporation, Application for Transfer of Control, File Nos. 0000032969 et al., at 11 (filed Oct. 14, 1999); Verizon Wireless, Bell Atlantic Corporation, and Vodafone AirTouch Plc Press Release, *Bell Atlantic and Vodafone AirTouch Launch Verizon Wireless*, Apr. 4, 2000, available at Westlaw, 4/4/00 PR Newswire 07:48:00; AT&T Corp. Press Release, *AT&T Announces Plans to Create a New Wireless Company*, Dec. 6, 1999, available at <<http://www.att.com/press/item/0,1354,2321,00.html>> (visited Apr. 14, 2000); Duff & Phelps Credit Rating Co., *Nextel's Convertible Senior Note Offering Rated 'B+' by DCR*, Jan. 26, 2000, available at Westlaw, 1/26/00 PR Newswire 13:46:00; Sprint PCS, *Sprint PCS – Newsroom – Facts-at-a-Glance*, available at <<http://s3.sprintpcs.com/news/Facts-at-a-Glance.html>> (visited Apr. 14, 2000).

BellSouth's CMRS operations will create a carrier with a coverage (net of divestitures) of approximately 175 million pops, including 40 of the 50 top markets.⁶ Since Newco's authorizations will cover fewer pops than the other major carriers, it will continue filling out its footprint through FCC auctions and other acquisitions.

As discussed below, the coverage areas of SBC and BellSouth are highly complementary, with only minimal overlaps. SBC provides wireless coverage in the Southwest, the West Coast, the Midwest and the Northeast. BellSouth serves the Southeast and certain other markets – and it also manages the A band cellular system in one of the country's largest markets – Houston – which is in SBC's region but where SBC does not currently have facilities.⁷ Thus, the joint venture creates an additional carrier whose footprint approaches near national coverage more efficiently than either SBC or BellSouth could accomplish on its own given the scarcity of available spectrum and the time and expense of building out nationwide facilities.⁸

⁶ Although VoiceStream's system is not fully built out, the other current near national carriers already have the ability to reach large numbers of customers. AT&T had licenses covering 94% of the population by the end of 1999. See AT&T S-3 at 52. Similarly, when GTE's wireless operations are added to Verizon Wireless it will serve 90% of the population in 96 of the top 100 markets, and Nextel already reaches 96 of those markets. See Nextel Partners Launches Three-In-One Wireless Service in Iowa, Business Wire 07:19:00 May 3, 2000; Leslie Cauley, *Bell Atlantic, Vodafone Plan IPO of Venture*, Wall St. J., Apr. 5, 2000, at B8.

⁷ As discussed below, SBC has a small, non-controlling interest (of approximately 2%) in the B band cellular carrier in Houston that it will be selling in connection with this transaction.

⁸ See Sigman Aff. ¶ 9.

C. The Ownership and Control of Newco

Newco is a limited liability company. It will be owned approximately 60% by SBC and 40% by BellSouth, reflecting the value of the assets they will contribute to the venture. An additional entity ("Manager") will manage Newco and will also own a minimal interest in Newco.⁹

Manager will be owned and controlled equally by SBC and BellSouth. Thus, although the economics of Newco will be split on a 60/40 basis between SBC and BellSouth, control will be equally shared. Any disputes regarding significant management decisions will be referred to a "Strategic Review Committee" within Manager, and SBC and BellSouth will each have two of the four seats on that committee. The committee may act only by a two-thirds vote, meaning that SBC and BellSouth will, as a practical matter, have to reach consensus.

IV. THE STANDARD OF REVIEW

To approve the transfer to Newco of ultimate control of SBC's and BellSouth's wireless FCC authorizations, the Commission must find that the transfers are consistent with the public interest, convenience and necessity. See 47 U.S.C. §§ 214, 310(d). In making that finding, the Commission considers (i) what markets may be affected by the transaction, (ii) whether the transaction will harm competition in any of those markets and (iii) whether the transaction will yield affirmative public interest benefits.¹⁰ The

⁹ The legal name of Newco is Alloy LLC; the legal name of Manager is Alloy Management Corp.

¹⁰ See In re Applications of Vodafone, AirTouch, Plc and Bell Atlantic Corp., DA 99-2451, DA 00-721, *Memorandum Opinion and Order*, __FCC Rcd. __, ¶ 25 (WTB/IB Mar. 30, 2000) ("Bell Atlantic/Vodafone"); In re Applications of Aerial

Footnote continued on next page

Commission must also determine whether SBC and BellSouth, and thus Newco, are qualified to control these FCC authorizations – a fact about which there can be no question.

Many transfer applications on their face involve no violation of the Communications Act or the Commission's Rules; no issue under the competitive component of the public interest standard; and no basic qualification issue. Like a number of other recent consolidations between wireless carriers, this is such a transaction. Thus, the Commission should approve the transfer applications expeditiously, especially since this transaction, once approved and consummated, will immediately enhance nationwide wireless competition.

V. THIS JOINT VENTURE WILL SERVE THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY

A. The Development of National Wireless Competitors

The agreement of SBC and BellSouth to enter a joint venture for CMRS service is simply the continuation of the trend – which the Commission has acknowledged, encouraged and repeatedly approved – towards the creation of facilities-based wireless carriers with near-national footprints. As shown by the great success of single rate plans, wireless customers are demanding nationwide service at affordable rates. It is difficult for carriers to offer such rate plans economically, however, if they do not have a national,

Footnote continued from previous page
Communications, Inc. and VoiceStream Wireless Holding Corp., DA 00-730,
Memorandum Opinion and Order, __ FCC Rcd. __, ¶ 30 (WTB/IB Mar. 31, 2000)
(“VoiceStream/Aerial”).

facilities-based footprint and thus have to pay high roaming charges to other carriers. As a result, carriers are assembling national networks in order to meet the needs and demands of customers. Integrated networks also allow carriers to offer consistent features across markets, including easier provision of wireless data services, so that consumers will have uniform service features, as well as uniform rates.¹¹ As discussed below, the Commission has specifically recognized that single rate national pricing plans serve the public interest.

The result of these demands has been the creation of five national wireless carriers: AT&T Wireless, Sprint PCS, Verizon, Nextel and VoiceStream. It is axiomatic that companies like SBC and BellSouth must expand their footprints as well.

B. The Joint Venture Will Serve the Public Interest by Creating a New National Competitor in Wireless Services

As the Commission has repeatedly found, the public interest is well served by transactions like this one that expand the footprints of CMRS carriers. For example, in Bell Atlantic/Vodafone, the Commission stated:

We agree with Applicants that the creation of another nationwide wireless competitor constitutes a clear, transaction-specific public interest benefit. We also concur

¹¹ See Sigman Aff. ¶¶ 4-5; Feidler Aff. ¶¶ 2-5. Statements by both industry observers and other carriers attest to these trends. See Morgan Stanley Dean Witter, Global Telecommunications Primer at 10 (June 1999) (“Morgan Stanley”) (noting that “owning networks provides more flexibility with national pricing plans, since carriers are not subject to the typically higher roaming rates charged by other carriers”); AT&T S-3 at 8, 42 (noting that “single rate pricing ... is simplifying customer choice, increasing penetration and leading to industry consolidation,” reporting that 74% of 1998 customers signing up for AT&T’s single rate were new to AT&T Wireless, and stating that its integrated network resulted in “improved quality and consistent features regardless of location”).

with Applicants that this alliance should enable them to realize significant cost savings, including incremental cost savings to subscribers from the reduction of roaming charges.

Id. ¶ 33. Similarly, in VoiceStream/Aerial the Commission concurred in the applicants' claim that "all mobile phone users needing access throughout the nation will benefit significantly from the creation of another competitor with a near-nationwide footprint."

Id. ¶ 44. In addition, in its Vanguard decision, the Commission stated:

We find that this merger should accelerate AT&T's ability to provide expanded service coverage using its own facilities. This merger will fill in gaps in AT&T's operational footprint.... As a direct result, AT&T will likely incur lower costs through inter-firm payments associated with roaming by AT&T customers on other carriers' networks. This consideration is important to AT&T's effort to support its uniform nationwide pricing plans. We have observed that this initiative has eliminated roaming and long distance charges to the obvious benefit of affected subscribers. We conclude that, on balance, Applicants have demonstrated that these transfers serve the public interest.¹²

¹² In re Applications of Vanguard Cellular Systems, Inc. and Winston, Inc., DA 99-481, *Memorandum Opinion and Order*, 14 FCC Rcd. 3844, ¶ 24 (WTB Mar. 11, 1999). Other Commission decisions approving the creation of regional cellular systems have confirmed the public benefits of expanded footprints. See, e.g., In re Application of 360° Communications Co. and ALLTEL Corp., DA 98-2637, *Memorandum Opinion and Order*, 14 FCC Rcd. 2005, ¶ 41 (WTB Dec. 30 1998); In re Applications for the Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corp. to SBC Communications Inc., FCC 98-276, *Memorandum Opinion and Order*, 13 FCC Rcd. 21292, ¶¶ 44-45 (Oct. 23, 1998) ("SBC/SNET"); In re Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Co., DA 95-1129, *Order*, 10 FCC Rcd. 13368, ¶¶ 45-46 (WTB May 19, 1995) (citing In re Application of Corpus Christi Cellular Tel. Co., DA 88-428, *Memorandum Opinion and Order*, 3 FCC Rcd. 1889, ¶ 19 (MSD Apr. 4, 1988) ("In addition to McCaw's public interest statement to the effect that regional systems . . . are in the public interest, such conclusion had previously been confirmed by the

Footnote continued on next page

This case is indistinguishable from these recent cases, and the same result is appropriate here. Neither SBC nor BellSouth standing alone currently has the scope of the existing five national carriers. Indeed, even after the transaction is completed, Newco will rank only as the sixth and smallest national carrier in terms of population coverage. Still, the creation of a new national competitor by combining SBC's and BellSouth's complementary coverage areas will clearly enhance competition among the major carriers.

The public interest benefits of this joint venture will not be limited to larger calling scopes and an enhanced ability to offer rates that reflect substantial savings due to reductions in roaming charges. Integrating the networks of SBC and BellSouth will also allow them to provide uniform service features across a wider area. In particular, such integrated networks are critical to the efficient provisioning of wireless data services.¹³ Moreover, the fact that SBC and BellSouth already use compatible technologies (TDMA and GSM)¹⁴ in most of their markets will not only facilitate the integration of their networks, it will also make it easier for their customers to use their phones outside the

Footnote continued from previous page

Commission, by the experience of large wireline operators and by McCaw's own experience in other regional clusters nationwide."); see also In re Application of Madison Cellular Tel. Co., DA 87-1207, 2 FCC Rcd. 5397, ¶ 4 (Aug. 28, 1987).

¹³ See Sigman Aff. ¶ 7; Feidler Aff. ¶ 6.

¹⁴ Although some SBC markets (i.e., those acquired in the Ameritech merger) currently use CDMA, they are being converted to TDMA.

United States. The Commission recognized and relied upon this public interest benefit in approving the merger of VoiceStream and Aerial.¹⁵

A number of other factors will assist this new carrier in competing with the five existing national carriers. Both SBC and BellSouth have proven track records in the provision of wireless service, as reflected by the fact that the joint venture will have more customers at its inception than any other wireless carrier except Verizon Wireless, despite having a coverage area that has more than 50 million fewer pops. Given this past history of success, the wireless venture will obviously be well qualified to compete vigorously with the other national carriers.

Moreover, SBC and BellSouth intend for Newco to take further steps to strengthen its competitive position. SBC and BellSouth have agreed to use Newco should they bid in upcoming spectrum auctions to acquire the spectrum needed to fill the remaining holes in the combined service areas. SBC and BellSouth also anticipate that Newco will be active in acquiring spectrum in the secondary market as well. To this end, the joint venture will have its own capital structure, which will allow it to raise capital for both geographic expansion and product development.¹⁶ Thus, the joint venture will have ready access to all of the resources it will need to compete on a national level with the other major wireless carriers.

¹⁵ See VoiceStream/Aerial ¶ 44 (“Moreover, the combination of VoiceStream and Aerial will also provide more U.S. consumers with the opportunity to subscribe to a carrier that accommodates international roaming access, where GSM technology often prevails.”)

¹⁶ As noted above, Newco will be managed by Manager, which has been established as a corporation to facilitate its ability to raise capital.

**C. The Joint Venture Will Result in Other Synergies and
Efficiencies That Will Benefit the Public**

In addition to achieving the geographic scope necessary to compete more effectively on a nationwide scale, saving money on roaming and reaping the benefits of integrated networks, the joint venture will generate a number of other synergies and efficiencies that will lower its costs, enhance its ability to compete and benefit the public. Combining Applicants' operations will inevitably bring cost savings due to economies of scale.¹⁷

The joint venture will also be able to take advantage of the best practices and wireless products of the two companies. For example, BellSouth Wireless Data is the only entity currently providing integrated nationwide wireless communications services to the public in the 900 MHz SMR band. The network is comprised of more than 1800 base stations and covers more than two-thirds of the entire population of the United States. Over the past decade, BellSouth Wireless Data has driven the development of highly innovative end-user products and services that are redefining the way in which its customers access, manipulate and transmit information on the move. Its customers do

¹⁷ See Sigman Aff. ¶ 8; Feidler Aff. ¶ 5. In approving similar recent transactions, the Commission has acknowledged that such cost savings are likely to occur and to promote efficiency. See Vodafone/Bell Atlantic ¶ 33 (“[T]he savings purportedly derived by realizing economies of scale could reasonably be expected to reduce the marginal costs of providing wireless services”); VoiceStream/Aerial ¶ 44 (noting that, while the applicants had not offered a specific factual basis for their claims of economies of scale, those claims were “certainly plausible”). Others have also noted the existence of significant economies of scale in this area. See Morgan Stanley at 10 (“Large carriers can exert negotiating leverage on handset and infrastructure equipment manufacturers, as well as on wholesale long distance providers and on roaming charges where they don’t own networks. A nationwide network helps a carrier by spreading marketing and operating costs over a bigger base of subscribers.”).

not roam because its extensive network is seamless, and its system permits businesses, individuals and public sector organizations to enjoy a wide range of applications, including computer-aided dispatch, workforce automation, remote database access, remote order entry, credit transaction verification, and telemetry. The combination of SBC's and BellSouth's wireless markets will join this product with SBC's extensive marketing resources, creating value that neither company could create alone.

VI. THE JOINT VENTURE WILL HAVE NO ANTICOMPETITIVE EFFECTS

A. The Parties Will Take Appropriate Actions to Comply with the Cellular Cross-Ownership and Spectrum Cap Rules

As noted above, there are very few overlaps between SBC's and BellSouth's wireless markets; indeed, the existence of such complementary coverage areas shows why the venture is a good way to create a new national competitor. In fact, there are only seven markets in which there are overlaps that implicate either the cellular cross-ownership rule or the spectrum cap: New Orleans, Baton Rouge, Louisiana RSAs 6, 8 and 9 (all of which are cellular/cellular overlaps), and Indianapolis and Los Angeles (both of which are cellular/PCS overlaps).¹⁸ With the exception of Los Angeles, which is

¹⁸ A chart giving detailed information regarding these overlaps is attached as Attachment C. There are other markets involving minor overlaps that do not implicate the Commission's cross-ownership or spectrum cap rules. For example, in the Houma-Thibodaux, Louisiana market, SBC owns the A band cellular license and BellSouth owns a 10 MHz PCS license. This overlap does not create any competitive concerns. Combining these authorizations in the joint venture will result in the ownership of only 35 MHz of spectrum, well below the cap. Moreover, since there are several other CMRS licensees in this market, including Sprint PCS, PrimeCo and MobileTel, there is no basis for concluding that combining these two authorizations would create any competitive issues. In Houston, there is an overlap between BellSouth's interest in the A band license and SBC's interest of just over 2% in the B band. Although there is no issue under the

Footnote continued on next page

discussed below, all of these overlaps that implicate the Commission's Rules will be resolved by the sale of SBC spectrum prior to closing. In the case of the Louisiana overlap markets, SBC will divest its CMRS and related authorizations, so there will be no cross-ownership. In the case of Indianapolis, where SBC owns a 30 MHz PCS license and BellSouth controls various A band cellular and related authorizations, SBC plans to sell 20 MHz of its PCS spectrum, which will bring Newco well under the spectrum cap in those market areas.¹⁹ Thus, none of these markets raises any competition issues.

B. A Brief Waiver Of The Spectrum Cap's Divestiture Requirement For A Single Market (Los Angeles) Is Warranted Because It Will Facilitate Nationwide CMRS Competition

Pursuant to Sections 1.3 and 1.925 of the Commission's rules,²⁰ the Applicants hereby apply for one limited waiver of the divestiture requirement contained in the CMRS spectrum cap rule.²¹ The waiver is limited in that it would be of short duration. It is needed, however, to facilitate Newco's ability to function as a new, nationwide CMRS competitor.

Footnote continued from previous page

Commission's cellular cross-ownership rule, as recently amended, SBC nevertheless plans to divest that 2% interest. In Hammond, Louisiana, SBC controls a 10 MHz PCS license, while BellSouth controls the B band cellular licensee for Louisiana RSA 7. Although this overlap does not raise any issues under the spectrum cap, SBC nonetheless is pursuing divestiture of its PCS license. In Pittsburgh, SBC holds a minority, non-controlling interest in the A band cellular license, which will not be contributed to Newco, and BellSouth has an indirect and de minimus (less than 2%) interest in the B band cellular license that will be contributed to Newco.

¹⁹ Moreover, there is no competitive harm here either since there are several other carriers operating and since the number of competitors will remain the same after SBC sells part of its PCS spectrum.

²⁰ 47 C.F.R. §§ 1.3, 1.925.

²¹ See 47 C.F.R. § 20.6(e).

Combining the SBC and BellSouth CMRS operations into a new joint venture involves the transfer of more than 2,300 FCC licenses, yet the plan for this joint venture would result in the 45 MHz spectrum cap being exceeded in only a *single* market — Los Angeles — and for only a brief period. As described below, under a partnership with AT&T covering the Los Angeles, Houston and Galveston markets, BellSouth has certain pre-existing election rights, which ripen on December 13, 2000 (“Election Date”) and which will allow Applicants to come into compliance with the spectrum cap shortly thereafter. Applicants thus request a waiver authorizing them to close the instant transaction – whereby SBC would contribute to Newco its entire PCS authorization for the Los Angeles MTA, while BellSouth would continue to hold, briefly, its interest in the Los Angeles cellular system – subject to the condition that Newco cure the Los Angeles overlap no later than January 27, 2001, 45 days after the Election Date. This 45-day period is needed to ensure sufficient time for the election to be made and the necessary transfer applications to be prepared and filed.²²

**1. Recent Divestiture Waivers of the Spectrum Cap Rule
Are Based on Promoting Nationwide Service and
Competition**

Under Section 20.6(a) of the Commission's Rules, no entity may hold an attributable interest in more than 45 MHz of broadband CMRS spectrum in any MSA.²³

²² See 47 C.F.R. § 20.6(e)(4)(i). The filing of the transfer applications will bring the Applicants into compliance with the spectrum cap.

²³ 47 C.F.R. § 20.6(a).

In the context of transfer applications, absent a waiver, any divestitures necessary to stay within the spectrum cap generally must occur prior to consummation of the transfers.²⁴

In September 1999, the Commission reassessed the need for a spectrum cap. Although it declined to eliminate the cap,²⁵ the FCC liberalized the restriction to permit licensees to hold up to 55 MHz of broadband CMRS spectrum in rural areas²⁶ and specifically ruled that waivers would be entertained where an interest in overlapping CMRS licenses would not be anticompetitive and would serve the public interest.²⁷

²⁴ See 47 C.F.R. § 20.6(e)(1), (e)(4).

²⁵ See 1998 Biennial Regulatory Review, Spectrum Aggregation Limits for Wireless Tele-communications Carriers, FCC 99-244, *Report and Order*, __ FCC Rcd. __, ¶¶ 20-27 (Sept. 22, 1999) (“1999 Spectrum Cap Order”). The Commission indicated that it would revisit the need for the cap during its biennial review this year and two Commissioners have stated that they believe the cap should be eliminated. *Id.* at ¶ 4 and Separate Statements of Commissioners Furchtgott-Roth and Powell.

²⁶ See 1999 Spectrum Cap Order ¶¶ 20-27.

²⁷ See *id.* ¶¶ 52, 127. Under Section 1.3 of the Commission's rules, any provision of the rules may be waived “if good cause therefor is shown.” 47 C.F.R. § 1.3. Good cause is shown and waivers are appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. See WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). The Commission may grant a request for waiver upon a showing that:

The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

In the recent VoiceStream/Omnipoint and VoiceStream/Aerial decisions, the Commission found that these criteria were satisfied for divestiture waivers because the transactions furthered the development of an additional nationwide CMRS system. In other words, VoiceStream was permitted to exceed the spectrum cap for a brief period in order to promote nationwide service and competition.²⁸ In VoiceStream/Omnipoint, waivers were needed to cure spectrum cap problems in *eighteen* markets; in VoiceStream/Aerial, waivers were necessary for *twenty-four* markets.

Despite the fact that these applications resulted in spectrum aggregations that exceeded the cap in 42 markets, the FCC granted the requested waivers to permit applicants 90 days after consummation of the mergers or 180 days from grant of the initial merger applications, whichever was earlier, to come into compliance with respect to the overlapping markets.²⁹ As shown below, the instant waiver request applies to only a single market, it serves the same recognized public interest benefits of promoting nationwide service and it is based on unique facts.

²⁸ See In re Applications of VoiceStream Wireless Corp. or Omnipoint Corp. and VoiceStream Wireless Holding Co., Cook Inlet/VS GSM II PCS, LLC, or Cook Inlet/VS GSM II PCS, LLC, FCC 00-53, *Memorandum Opinion and Order*, 15 FCC Rcd. 3341, ¶ 32 (Feb. 15, 2000) (“VoiceStream/Omnipoint”); VoiceStream/Aerial ¶¶ 36-38. Accord 47 U.S.C. § 151 (the purpose of the FCC shall be “to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . .”).

²⁹ See VoiceStream/Omnipoint ¶ 32; VoiceStream/Aerial ¶ 38. Because the two transactions involved VoiceStream’s attempts to become a nationwide provider, the 180-day period granted by the Commission for divestiture ran from grant of the initial VoiceStream/Omnipoint decision. A new 180-day period was not granted for the Aerial divestitures.

2. **Grant of the Instant Waiver Request is Consistent with the Objective of Furthering Nationwide Competition and Is Based on Unique Facts and Circumstances**

Under the current plans for wireless operations to be contributed to Newco, Newco would exceed the 45 MHz cap in Los Angeles because: (i) SBC will be contributing its Los Angeles PCS system to Newco, and (ii) BellSouth's existing minority equity interest in AB Cellular Holding LLC ("AB Cellular"), the licensee for the A Block cellular system in Los Angeles, will be attributable to Newco.³⁰ A brief divestiture waiver is needed to close the Newco transaction, which will create a new, near nationwide CMRS provider. Thus, Commission approval of this request will promote the same important public interest benefits the FCC lauded in the recent VoiceStream decisions. Here, however, Applicants seek a waiver of the spectrum cap with respect to *only one* market, not forty-two, as were sought in the VoiceStream transactions.

Moreover, grant of the requested waiver will not adversely affect competition during the brief divestiture period. In essence, the waiver merely preserves the *status quo*. Pursuant to a management agreement, AT&T already runs the day-to-day operations of the Los Angeles cellular system. In fact, in March 1999, AT&T rebranded the cellular service offered by AB Cellular in Los Angeles as AT&T Wireless service. Thus, the grant of this waiver will ensure that current subscribers of AB Cellular in Los Angeles are not inconvenienced in any way.

³⁰ BellSouth holds a 45% equity interest in AB Cellular, and AT&T holds the remaining 55% equity interest. Both parties have negative control over AB Cellular. However, AT&T manages the Los Angeles system, and BellSouth manages the AB Cellular systems in Houston and Galveston.

Unlike the relief requested by applicants in the other divestiture cases, the waiver sought here has the advantage of being tied both to a date certain (January 27, 2001) and an identified buyer who is clearly qualified. As noted above, BellSouth's interest in the A band cellular license in Los Angeles is held through AB Cellular. Pursuant to the AB Cellular Formation Agreement, there are redemption provisions that give BellSouth 30 days from **December 13, 2000** to elect one of the following three options:

- Option 1: Redeem AT&T's interest in AB Cellular by distributing the Los Angeles property to AT&T and obtain complete control of AB Cellular and its remaining cellular properties in Houston and Galveston;
- Option 2: Partially redeem BellSouth's interest in AB Cellular where BellSouth receives the cash contributed by AT&T (or the assets purchased with that cash) and AT&T receives full managerial and operational control over AB Cellular and all the FCC licenses it holds; or
- Option 3: Redeem BellSouth's interest in AB Cellular in return for cash equal to the lesser of (i) the value of its interest at the formation of AB Cellular, plus interest, and (ii) the fair market value of its interest in AB Cellular.³¹

SBC and BellSouth have agreed that Newco will have the right to make this election, and they have further agreed that, within Newco, SBC has the sole right to select the option. Thus, on December 13, 2000, SBC will be able to direct the election of one of the three options. At this time, SBC anticipates choosing Option 1, which would result in AT&T holding the A band cellular license in Los Angeles and Newco obtaining control of AB Cellular and the remaining cellular licenses it holds — Houston and Galveston.

The Applicants commit that, whichever election is made, the license overlap and corresponding spectrum cap issue in Los Angeles will be cured no later than January 27,

³¹ See Section 9.1 of the Limited Liability Company Agreement for AB Cellular Holding, LLC (November 13, 1998) ("Formation Agreement") (Attachment D hereto).

2001. Applicants request this 45-day period to ensure sufficient time for AT&T and BellSouth to comply with the AB Cellular Formation Agreement and to provide adequate time to prepare and file the necessary transfer applications, especially given the intervening holiday period. Thus, this situation is unique in that a pre-existing agreement spells out a *date certain* upon which the divestiture process will begin and ensures that an identified and clearly qualified buyer for the divested property will be selected.

Finally, the proposed divestiture date (i) is likely to be well in advance of the outer limit afforded VoiceStream (180 days from grant of the merger applications), and (ii) may be within the 90 days from consummation deadline granted in the VoiceStream decisions. Applicants obviously would prefer the most expeditious action possible to bring the joint venture to the market, given that there already are other national CMRS carriers currently operational. As demonstrated in the table below, however, it has taken the FCC between 120 and 213 days to issue decisions with respect to recent wireless transactions designed to create nationwide CMRS providers.

**TIMELINE FOR FCC ACTION ON RECENT WIRELESS MERGER/
JOINT VENTURE APPLICATIONS**

Merger/Joint Venture	Application Filing Date	FCC Grant Date	Elapsed Time
VoiceStream/Omnipoint	July 16, 1999	February 14, 2000	213 days
Bell Atlantic/Vodafone	October 14, 1999	March 30, 2000	168 days
VoiceStream/Aerial	December 1, 1999	March 30, 2000	120 days

The average time for a decision in each of these transactions has been 167 days.

If the instant transaction is subject to a similar timeline and outcome, the anticipated grant date would be October 18, 2000. Assuming Applicants consummated

the transaction within thirty days of grant, the 90 day grant period afforded applicants in the VoiceStream decisions would expire on February 15, 2001 — nineteen days later than the requested divestiture deadline. Similarly, under this scenario, the proposed divestiture date would be well within the 180 days from grant time limit — April 16, 2001. Even if the FCC released a decision within the shortest period (120 days), the proposed January 27th divestiture date still would be within the 180-day limit granted in the VoiceStream decisions.

Based on the foregoing, Applicants respectfully submit that the public interest would be served by grant of a waiver of Section 20.6(e) that authorizes them to close the instant transaction subject to the condition that they eliminate the CMRS license overlap in Los Angeles no later than January 27, 2001 or, if the Commission does not act prior to December 13, 2000, the earlier of 180 days from grant or 90 days from closing.

C. There Are No Anticompetitive Effects

Apart from the limited overlaps discussed above that implicate the Commission's Rules, and that will be cured prior to closing, there are no competitive issues that require any consideration.³² Rather, this transaction is a simple and straightforward

³² Other than the wireless voice and data market that is the subject of this transaction, the only other arguably relevant market is the market for international services, since both SBC's and BellSouth's wireless carriers provide international service. The Commission regulates the Applicants' provision of such services on a resale basis as nondominant on all international routes, including those where BellSouth and SBC have foreign carrier affiliations. In addition, although BellSouth Wireless Data is authorized to provide facilities-based service between the United States and Canada, it too is regulated as nondominant on that route. See International Authorizations Granted, DA 99-1317, *Public Notice*, 14 FCC Rcd. 13107 (July 2, 1999). The amount of combined international traffic carried by the Applicants' CMRS affiliates is nowhere near significant enough to raise anticompetitive concerns on any international route. Moreover, the transaction will

Footnote continued on next page

consolidation of wireless properties that will enhance competition for all of the reasons that the Commission has identified in numerous orders regarding the creation of regional and national wireless carriers.

In addition to creating a sixth national wireless carrier, the agreements between SBC and BellSouth preserve and enhance the ability of SBC and BellSouth to compete both with Newco and with each other. Thus, this transaction will not only add a new national wireless competitor on the day it is implemented; it would also result in the addition of two additional competitors in many markets.³³ Moreover, the formation of Newco will not limit the ability of SBC and BellSouth to compete against each other outside the wireless market. Rather, Newco will be free to offer packages of services that combine its own CMRS service with landline service. SBC and BellSouth, in turn, will

Footnote continued from previous page
not harm competition because it will not eliminate a significant participant in the provision of international services. See Bell Atlantic/Vodafone ¶ 28; VoiceStream/Aerial ¶ 39. The Commission has determined consistently that the BellSouth wireless carriers are to be regulated on a nondominant basis. Although SBC is affiliated with several foreign carriers, the Commission has recently concluded, in approving the SBC/Ameritech merger, that these affiliations do not raise competitive concerns. See In re Applications of Ameritech Corp. and SBC Communications Inc., FCC 99-279, *Memorandum Opinion and Order*, 14 FCC Rcd. 14712, ¶¶ 527-38 (Oct. 8, 1999) (“SBC/Ameritech”). In any event, BellSouth and SBC are contributing only their wireless carriers and the international Section 214 authorizations held by those carriers to Newco.

³³ Indeed, SBC and BellSouth will not be limited to offering wireless services only through their investment in Newco. Rather, they will also be able to sell wireless services provided over Newco’s facilities – in competition with Newco and with each other – both in and out of region. Specifically, out of their respective regions, SBC and BellSouth will each be able to resell Newco’s service, while in region they will, at least initially, act as Newco’s agent. Both parties, however, may convert to reseller status in region after six months for national accounts or for the sale of wireless services as part of packages, and may resell stand-alone wireless service after three years.

be allowed to package CMRS service obtained from Newco – both resold service out of region and service offered as Newco’s agent in region – with landline and other services in order to offer packages to consumers. Thus, the formation of Newco, with its near national wireless footprint, will enhance the ability of SBC and BellSouth to serve their current and future customers. It will also enhance their ability to compete with other carriers and with each other in the provision of other telecommunications services.

Indeed, by greatly expanding SBC’s ability to offer facilities-based wireless service, the joint venture will enhance SBC’s ability to offer packages of service in several major markets that it is committed to enter pursuant to its “National-Local” Strategy and the conditions to which it agreed to in connection with its merger with Ameritech.³⁴ Thus, far from raising competitive concerns, the joint venture is strongly procompetitive.

**VII. SBC, BELLSOUTH AND NEWCO ARE EMINENTLY
QUALIFIED TO CONTROL THESE LICENSES**

There can be no question as to the qualifications of SBC and BellSouth, and thus of their joint venture, Newco, to control the authorizations at issue. Each company already controls the kinds of authorizations that are being contributed to the venture by the other. The qualifications of SBC and BellSouth are well known to the Commission, which has repeatedly found that they are qualified to control the types of authorizations at issue here.³⁵ SBC and BellSouth are two of the nation’s most successful cellular carriers

³⁴ See Sigman Aff. ¶ 9.

³⁵ See e.g., International Bureau and Wireless Telecommunications Bureau Grant Consent for Transfer of Control of Licenses of Cellular Communications of Puerto Rico,

Footnote continued on next page

and they also have extensive PCS operations. They both provide high quality, competitive CMRS service to their customers. Given the experience and capabilities of both SBC and BellSouth, the qualifications of Newco to control these authorizations are beyond dispute.

VIII. RELATED GOVERNMENTAL FILINGS

The Department of Justice will conduct its own review of the competitive aspects of this transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, and the rules promulgated under that Act. SBC and BellSouth will soon submit to the Department of Justice and the Federal Trade Commission a pre-merger notification form and an associated documentary appendix. In addition, although the proposed joint venture will only operate domestically, the transaction still requires clearance from the European Commission ("EC") under its Merger Regulation. Notification of this transaction was given to the EC on April 25, 2000. The joint venture does not present any significant competition issues for the European Union, however, and Applicants expect to obtain EC clearance in the near future.

Footnote continued from previous page

Inc., to SBC Communications Inc., DA 99-1654, *Public Notice*, 14 FCC Rcd. 13506 (WTB/IB Aug. 18, 1999); SBC/Ameritech ¶¶ 568-573; In re Applications of Comcast Cellular Holdings, Co. and SBC Communications Inc., DA 99-1318, *Memorandum Opinion and Order*, 14 FCC Rcd. 10604 ¶¶ 4-5 (WTB July 2, 1999) ("SBC/Comcast"); SBC/SNET ¶¶ 26-27; In re Applications of Pacific Telesis Group and SBC Communications, Inc., FCC 97-28, *Memorandum Opinion and Order*, 12 FCC Rcd. 2624, ¶ 11 (Jan. 31, 1997) ("SBC/Telesis"); FCC Public Notice, Report No. 284 (July 28, 1999). Moreover, the Commission has granted all of Applicants' renewal applications filed to date. See e.g., FCC Public Notice, Report No. 375 (Nov. 17, 1999); FCC Public Notice, Report No. CWS-99-9 (Nov. 27, 1998).

IX. ADDITIONAL AUTHORIZATIONS

In addition to seeking the Commission's approval of the transfers of control of the FCC authorizations covered in these applications, the Applicants are also requesting the additional authorizations described below.

A. After-Acquired Authorizations

While the lists of authorizations specified in the applications for approval of the transfers of control are intended to be complete, SBC's and BellSouth's subsidiaries and affiliates that are the subject of this transaction may have on file, and may file for, additional authorizations for new or modified facilities, some of which may be granted during the pendency of these transfer of control applications. Accordingly, SBC and BellSouth request that the grant of the transfer of control applications include authority for Newco to acquire control of the following items:

- (1) any authorization issued to SBC's or BellSouth's subsidiaries and affiliates during the Commission's consideration of the transfer of control applications and the period required for consummation of the transaction following approval;
- (2) construction permits held by such licensees that mature into licenses after closing and that may not have been included in the transfer of control applications; and
- (3) applications that will have been filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

Such action would be consistent with prior decisions of the Commission.³⁶

B. Unconstructed Systems/Antitrafficking Rules

SBC holds three PCS authorizations that were obtained by competitive bidding within the last three years and that will be transferred to Newco in connection with this transaction.³⁷ Pursuant to 47 C.F.R. § 1.2111(a), Applicants state that there was no separate consideration assigned to these (or any other) licenses that are being transferred to Newco as part of the overall joint venture. In addition, both SBC and BellSouth have obtained authorizations to provide service in unserved areas during the last year. These authorizations do not raise any issue under 47 C.F.R. § 22.943(b) because the areas in question are being served by systems that have been in operation for more than one year.

Although virtually all of the microwave authorizations controlled by SBC and BellSouth that are the subject of the proposed transfer of control represent constructed facilities, there is a small number of authorizations for which facilities have not yet been constructed. Under § 101.55(d) of the Commission's Rules, the transfer of control of such authorizations does not implicate the Commission's antitrafficking restrictions because the transfer is incidental to the larger transaction involving the transfer of control

³⁶ See, e.g., SBC/Ameritech ¶ 583; SBC/SNET ¶ 49; SBC/Telesis ¶ 93; In re Applications of Craig O. McCaw and American Tel. & Tel. Co., FCC 94-238, *Memorandum Opinion and Order*, 9 FCC Rcd. 5836, ¶ 137 n.300 (Sept. 19, 1994), *aff'd sub nom. SBC Communications Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir.), *recons. in part*, 10 FCC Rcd. 11786 (Oct. 30, 1995).

³⁷ These three PCS licenses were originally obtained by Comcast Corp. through competitive bidding in June 1997. SBC acquired control of these and other wireless authorizations of Comcast in July 1999.

of the ongoing CMRS businesses of SBC and BellSouth, with no separate payment being made with respect to any individual authorizations or facilities.³⁸

C. Blanket Exemptions to Cut-Off Rules

The public notice announcing the plan for Newco to acquire virtually all of the wireless licenses controlled by SBC and BellSouth will provide adequate notice to the public with respect to such licenses, including any for which license modifications are now pending. Therefore, no waiver needs to be sought from Sections 1.927(h) and 1.929(a)(2) of the Commission's Rules to provide a blanket exemption from any applicable cut-off rules in cases where SBC or BellSouth file amendments to pending applications to reflect the consummation of the proposed transfer of control.³⁹

X. CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Commission conclude that this joint venture serves the public interest, convenience and necessity, and thus expeditiously grant the applications to transfer control of SBC's and BellSouth's FCC authorizations to Newco.

³⁸ See SBC/SNET ¶ 49; SBC/Telesis ¶ 91.

³⁹ See In re Applications of Ameritech Corp. and GTE Consumer Servs. Inc., DA 99-1677, *Memorandum Opinion and Order*, __ FCC Rcd. __, ¶ 2 n.6 (WTB Aug. 20, 1999); SBC/Comcast ¶ 2 n.3.

AFFIDAVIT OF STAN SIGMAN

STATE OF TEXAS)
) SS
COUNTY OF BEXAR)

STAN SIGMAN, being duly sworn, deposes and says:

1. My name is Stan Sigman. I am the Group President-SBC National Operations. In that capacity, I am responsible for managing all of the wireless services of SBC Communications Inc. These services include the cellular services offered within SBC's traditional five-state territory (which are marketed under the Southwestern Bell brandname), the PCS services offered in California and Nevada (which are marketed under the Pacific Bell and Nevada Bell Mobile Services brandnames), the cellular and PCS services offered in the former Ameritech in-region states (which are marketed under the Ameritech Mobile brandname) and, cellular services offered in other parts of the country including the US Virgin Islands and Puerto Rico (which are operated under the Cellular One brand name).

2. In my responsibilities for SBC I am also the Chairman of the Board of SBC Telecom Inc. ("SBCT"), which is the SBC subsidiary through which SBC will implement our 30 market National-Local Strategy. SBCT is currently undertaking efforts to enter the 30 largest MSAs not served by an SBC affiliate as an incumbent local exchange carrier.

3. SBC and BellSouth have agreed to contribute substantially all of their domestic wireless operations to NewCo. SBC will derive substantial benefits from the formation of NewCo. These benefits will, in turn, result in a number of pro-competitive and pro-consumer benefits which will not only make NewCo an effective wireless competitor but will result in the availability of enhanced wireless services to the public. Those advantages, which were the main driver of this transaction, are described below. In addition, while we did not undertake a detailed analysis of expected cost savings through reductions in staff, overhead and the like, we expect to achieve those types of savings.

4. The wireless industry has undergone a substantial transition over the last few years. While a wireless company's "footprint" has always been of paramount importance to the customer, prior to the passage of the Telecom Act, the primary calling scopes made available to consumers were market specific or, at best, regional in nature. With the passage of the Telecom Act and the freedom afforded to wireless companies affiliated with BOCs to offer expanded calling scopes as a result of new interLATA freedoms, the competitive landscape changed dramatically. The market almost immediately began to create larger regional calling scopes which then became state-wide calling scopes and have now become national in scope. This phenomenon is evidenced by the large number of single rate plans offered by competitors such as AT&T, Verizon Wireless, Nextel, Sprint and VoiceStream/ Omnipoint/Aerial.

5. As these rate plans have proliferated, the need for wireless carriers to have their own national networks has become more apparent. Early efforts to offer single rate plans consisted primarily of carriers buying down roaming minutes and offering those minutes in packages to customers. This is a highly inefficient method of providing a single rate plan. As these plans became more prevalent, and the number of customers utilizing these plans increased dramatically, carriers began to focus on efforts to obtain a single network platform to the fullest extent possible. This has resulted in the combination of Bell Atlantic, Vodafone and (soon) GTE into the new Verizon Wireless, AT&T continuing to expand its footprint, Sprint's construction of a national network and the combination of VoiceStream/Omnipoint and Aerial.

6. SBC and BellSouth, each of whom has its own strong regional footprint and brand names, lack a single national network to compete with these other carriers. The combination of the wireless assets of SBC and BellSouth into NewCo is the most efficient and cost-effective way to build a foundation on which NewCo can ultimately create a sixth national network to compete in the new wireless market. This combination will produce the broader geographic coverage, enable the minimization of roaming fees and generate the marketing efficiencies which will make NewCo a more effective competitor than either SBC and BellSouth would have been on its own.

7. In addition to the competitive and marketing consequences of having a single network, NewCo will, in fact, experience a number of cost savings and efficiencies. One of the most important efficiencies that will be derived by NewCo is a

result of the fact that BellSouth and SBC have made similar technology choices for their wireless networks. One of the critical components to offering a national rate plan is the ability to offer the same services and features on a ubiquitous basis around the country. This cannot be done without a compatible network technology. This is particularly important as data capabilities become more significant to wireless offerings. SBC and BellSouth each use TDMA digital platforms in their cellular markets and GSM platforms in their PCS markets. While the GSM and TDMA systems are not compatible today, each of the GSM and TDMA technologies are built on the same foundation (i.e., the division of the radio frequency into timeslots). As a result, the GSM and TDMA technologies are rapidly converging, so that NewCo will be able to offer a single device that will work on both networks in the not too distant future. Moreover, by combining our resources, including the purchase of network equipment and wireless phones, and working together in the standard setting process, we will be able to expedite the convergence of TDMA and GSM more effectively on a combined basis than either SBC or BellSouth could have on their own.

8. NewCo will also be a more efficient provider of wireless services than either SBC or BellSouth would have been on its own. These efficiencies will be derived through the creation of a national network, which will reduce the reliance of NewCo on roaming rates as NewCo promotes its own one rate plan, the creation of a single headquarters' staff that will manage the business and will result in the elimination of duplication in that area, and other economies of scale which can be derived from combining these two well-managed wireless entities into a single new company.

NewCo will be able to generate efficiencies by consolidating national advertising media, reducing customer service and billing costs and through decreased per-unit costs for network equipment, handsets and other inputs into the business. NewCo will also be able to more efficiently develop and offer new products and services as the new product development implementation and marketing costs will be spread over a larger network and subscriber base. By way of example, since SBC has built its wireless business through a number of acquisitions, we have multiple wireless OSS systems which must be maintained. This not only increases the cost of issuing bills, it makes it more difficult to offer common rate plans across many markets. To overcome these difficulties, SBC is converting its wireless operations to a single billing system. BellSouth has also been creating and implementing a single billing system. By spreading the cost of one billing system across both companies, we will be able to bill customers more efficiently and cost-effectively, we will be able to manage that single billing system with fewer people than are necessary to manage existing billing systems today, and we will be able to offer a more effective single bill capability to customers as we have a ubiquitous set of features, functionalities, capabilities and price plans spread across a larger company.

9. NewCo will also be able to fill out its national footprint more effectively than either SBC or BellSouth would have been able to undertake on its own. First, there is a limited amount of spectrum that is even available for wireless services in the US. It is quite likely that each of SBC and BellSouth would not have been able to create a truly national footprint on a standalone basis simply as a result of the lack of sufficient

available spectrum.

Lastly, from SBC's standpoint, having access to a national wireless capability will make SBC a more effective competitor as it rolls out its National-Local Strategy. Since SBC lacked a national wireless footprint, its ability to offer wireless components in a bundle as it competes with Bell Atlantic, BellSouth, US West, Qwest, AT&T and other carriers who are offering bundles of services would have been less effective without NewCo. Both SBC and BellSouth will have the ability to sell wireless services offered by NewCo. This ability to offer a national wireless capability as a part of a package of services as we enter markets such as Atlanta, Miami, and Charlotte other markets (including those in which NewCo acquires through auctions or other acquisitions), will enhance SBCT's competitive offerings.

/s/ Stan Sigman

Subscribed and sworn to before me this 3rd day of May, 2000.

/s/ Herlinda H. Almaquer
Notary Public
State of Texas
Comm. Exp. 11/12/00

AFFIDAVIT OF MARK FEIDLER

STATE OF GEORGIA)
FULTON COUNTY) SS:

1. My name is Mark Feidler and I am President of BellSouth Mobility Inc. I am responsible for managing the wireless mobile voice and data services of BellSouth Corporation. BellSouth's current wireless coverage is focused on the Southeast, the southeastern Texas coastal region (Houston and Galveston), central Indiana (the Indianapolis, IN metro area and environs), and the Los Angeles, CA metro area.

2. As the footprints of our competitors have grown, I have personally witnessed the need for a national infrastructure and pricing scheme. Under FCC regulations, 10 or more wireless carriers may operate in a single market. With many vigorous competitors, customers are very aware of services provided by each carrier in terms of geographic scope, functionalities and pricing plans.

3. Moreover, the wireless industry is experiencing consolidation among certain strong regional and local providers. They want to be able offer customers a national footprint, national pricing plans, and “one-stop shopping.” These carriers are also trying to avoid costly roaming charges.

4. AT&T has acquired numerous wireless companies, and turned that aggregation into a publicly traded domestic wireless entity. The advent of AT&T Wireless and existing and proposed combined wireless operations, such as Bell Atlantic/GTE/Vodafone-Airtouch, MCI-WorldCom/Sprint, and Voicestream/Omnipoint/Aerial, shows that there is strong momentum toward facilities-based national service. These are large well-capitalized competitors with substantial financial, technical, marketing and other resources. The U.S. wireless industry is increasingly shifting towards the use of flat-rate national pricing plans, which eliminate roaming and long distance charges.

5. It is against this background that the proposed joint venture should be reviewed. BellSouth and SBC have largely complementary wireless networks (both from a geographic and technical standpoint). The creation of a joint operating company offers the best chance to meet our competition. The merged entity will be strong in terms of coverage, network quality, research and development, technical expertise, customer service and marketing. The financial resources available to the new company will allow it to complete its goal of a national footprint and give it the ability to compete favorably with other national providers. Newco should also provide the opportunity to streamline all of these operations, while increasing the depth and resources of the new company by combining the best assets from BellSouth and SBC. The national pricing plans that

BellSouth has offered to date have relied on a series of non-facilities-based roaming agreements. The joint venture will significantly reduce this costly way of operating and will facilitate the realization of each company's desire to have a national facilities-based wireless network.

6. The joint venture also will help us promote and develop BellSouth's nationwide mobile data service - BellSouth Mobile Data ("BSMD"). The new venture will permit BSMD to take full advantage of nationwide marketing and distribution systems created by the new company. BSMD will be linked in customers' minds with a nationwide provider of wireless service. BSMD targets the business community by providing monitoring services, interactive messaging, and transactional services on a nationwide basis. These services will be greatly assisted by having a nationwide wireless company behind it. Moreover, the joint venture's research and development capability will help drive BSMD into even more innovative data services.

7. Finally, I have reviewed the material concerning BellSouth in the Public Interest Statement, and it is true and correct to the best of my belief.

/S/
Mark Feidler

Subscribed and sworn to before me
this 3rd day of May, 2000.

/S/
Carol J. Smith
Notary Public

SBC/BELLSOUTH WIRELESS OVERLAPS

Market	SBC Interest	BellSouth Interest
New Orleans CMA 029	Cellular/A Band Radiofone, Inc. KNKA352	Cellular/B Band Louisiana Cellular Holdings, LLC KNKA224
Baton Rouge CMA 080	Cellular/A Band Baton Rouge Cellular Telephone Co. KNKA361	Cellular/B Band Louisiana Cellular Holdings, LLC KNKA268
Louisiana RSA 6 CMA 459	Cellular/A Band (A2) Radiofone, Inc. KNKQ396	Cellular/B Band (B1) Acadiana Cellular General Partnership KNKN499 Cellular/B Band (B2) Lafayette MSA Limited Partnership KNKN500
Louisiana RSA 8 CMA 461	Cellular/A Band Radiofone, Inc. KNKN442	Cellular/B Band (B1) Louisiana RSA No. 8 Limited Partnership KNKQ454
Louisiana RSA 9 CMA 462	Cellular/A Band Radiofone, Inc. KNKN724	Cellular/B Band (B1) Louisiana Cellular Holdings, L.L.C. KNKQ455
Los Angeles MTA 002 CMA 002	PCS/B Block Pacific Telesis Mobile Services KNLF205	Cellular/A Band AB Cellular Holding, LLC KNKA351

Market	SBC Interest	BellSouth Interest
Indianapolis	PCS/B Block Ameritech Wireless Communications, Inc. KNLF262	
MTA 031		Cellular/A Band Westel-Indianapolis Company, Inc. KNKA806
CMA 217		KNKN307
CMA 411		KNKA208
CMA 028		KNKA558
CMA 247		
		Cellular/A Band Bloomington Cellular Telephone Co. KNKA654
CMA 282		
		Cellular/A Band Indiana 8, L.L.C. KNKN340
CMA 410		
		Cellular/A Band Indiana Cellular Corporation KNKN445
CMA 407		
		Cellular/A Band Muncie Cellular Telephone Co., Inc. KNKA661
CMA 236		
		Cellular/A Band Terre Haute Cellular Telephone Company, Inc. KNKA762
CMA 185		
		Cellular/A Band Westel-Milwaukee Company, Inc. KNKN449
CMA 409		

*Excerpt from Limited Liability Company Agreement of
November 13, 1998 for AB Cellular Holding, LLC*

ARTICLE IX
PUT AND CALL PROVISIONS

9.1. Options of the BellSouth Members.

Provided that a System Material Adverse Effect has not occurred, at any time during the 30-day period commencing on December 13, 2000, the BellSouth Members, in their full and absolute discretion, may elect any one of the following options:

(a) to cause the Company to redeem the Interests held by the AT&T Members in consideration of a distribution in kind of the Los Angeles System, or, if the Los Angeles System has been transferred to LA Newco as contemplated by Section 3.2, the entire membership interest of LA Newco held by the Company;

(b) to cause the Company to redeem a percentage of the BellSouth Members' Interests in consideration of an in kind distribution of all of the membership interests of Other Business Newco, such percentage to equal (i) the Fair Market Value of the assets of Other Business Newco, divided by (ii) the Fair Market Value of all of the Company's consolidated assets, in each case as of the BellSouth Exercise Date (as defined below); provided that the Houston Management Agreement shall terminate and the BellSouth Members shall remove their representatives from the Management Committee as of the date of its election of this option under subsection (b) and shall not have any right to appoint any further representatives to the Management Committee; provided, further, that the Company shall have a five-year call on the balance of the BellSouth Members' Interests for cash equal to the Fair Market Value of such Interests on the date the call is exercised pursuant to the following terms: The Company may elect to purchase the balance of the BellSouth Members' Interests by giving written notice (the "Company Call Notice") to all of the BellSouth Members not later than the expiration of such five-year period, and, if the Company elects to exercise its right under this Section 9.1(b), the BellSouth Members' Interests shall be purchased by the Company for cash at a purchase price (the "Call Purchase Price") equal to the Fair Market Value of such Interests. The closing of the purchase and sale of the balance of the BellSouth Members' Interests shall occur on the 10th day following the determination of such Interests' Fair Market Value at the Company's principal office, or at such other date and time agreed to by the Company and the BellSouth Members. At such closing, the Company shall deliver the Call Purchase Price to the BellSouth Members by wire transfer of immediately available funds (pursuant to written instructions delivered to the Company by the BellSouth Members) upon the receipt of such agreements, certificates, releases,

instruments and other documents as the Company may reasonably require in order to ensure that the BellSouth Members effectively transfer to the Company at closing their entire Interests in the Company, free and clear of any Liens; or

(c) to cause the Company to redeem the BellSouth Members' (collective) Interests in consideration of a cash payment equal to the lesser of: (i) the sum of the BellSouth Members' Capital Contributions, which shall be deemed to be the sum of the Interest Values attributable to the BellSouth Members (collectively) as of the Effective Date, and the amount of any additional Capital Contributions made by the BellSouth Members (collectively) pursuant to Section 4.3, plus an amount equal to an 8% return, less the amount of distributions received by the BellSouth Members pursuant to Article VII plus an amount equal to an 8% return, each such 8% return to be compounded annually on such amounts, with the return computed on any such amount from the Effective Date or the date of the contribution or distribution of such amount, as appropriate, to the date of the redemption of the BellSouth Members' Interests; or (ii) the Fair Market Value of the BellSouth Members' (collective) Interests as of the BellSouth Exercise Date (as defined below); provided that the Houston Management Agreement and the Other Business Management Agreement shall terminate and the BellSouth Members shall remove their representatives from the Management Committee as of the date of its election of this option under subsection (c) and shall not have the right to appoint any further representatives to the Management Committee; further provided that the AT&T Members shall have the option to cause the Company to conduct an auction and sale of the Permitted Other Business (if any) for cash and to distribute the net proceeds of such sale to the Members *pro rata* based on their Membership Percentages as of the BellSouth Exercise Date; provided, further, that if the AT&T Members cause the Company to conduct such auction and sale, the net proceeds of such sale shall be deemed to be the Fair Market Value of the Permitted Other Business for purposes of clause (ii) and shall be paid upon consummation of such sale.

In order to exercise any such election, the BellSouth Members (collectively) shall deliver Notice thereof to the AT&T Members within the aforementioned 30-day period. The date of the delivery of such Notice is hereinafter referred to as the "BellSouth Exercise Date." Any such election shall be irrevocable and shall specify which of the three options is being exercised by the BellSouth Members (collectively). After the BellSouth Members (collectively) make such election, each of the Members shall use its reasonable best efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Section 9.1, including (i) filing any necessary notice filings with the FCC and any applicable Public Utility Commission; (ii) cooperation in determining whether any other action by or in respect of, or other filing with, any governmental body, agency or official or authority is required; (iii) cooperation in determining whether any actions, consents, approvals or waivers are required to be obtained from any third parties, including any third parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement; (iv) cooperation in seeking and obtaining any such actions, consents, approvals or waivers; and (v) the execution of any additional instruments related to the consummation of the transactions contemplated hereby. (Notwithstanding the terms hereof, no party hereto shall be required to agree to the imposition by any Governmental Entity of conditions or limitations

which are materially adverse to such party, or otherwise take any step to avoid or eliminate any impediment which may be asserted under the laws of the United States or any state which, in the reasonable judgment of any party hereto, would result in a material limitation of the benefit expected to be derived by such party as a result of the consummation of the transactions contemplated hereunder.) The Members shall cause the closing of the transactions contemplated by this Section 9.1 to occur on the business day that is five Business Days after the date (the "Final Order Date") that is the later of (i) the date that all requisite approvals and consents of all applicable Governmental Entities are obtained, or (ii) in the event that any claim, suit, litigation, proceeding, complaint, charge, arbitration or mediation ("Action") is instituted that seeks to prevent the consummation of the transactions contemplated by this Section 9.1, the date that a Final Order or final, non-appealable judgment or order in favor of the Company or the BellSouth Members (collectively) or order dismissing such Action is entered by a Governmental Entity (including a court of competent jurisdiction). If, after the BellSouth Exercise Date and prior to the consummation of the transactions contemplated by this Section 9.1, a Final Order or a final, non-appealable order or judgment of a Governmental Entity (including a court of competent jurisdiction) is issued prohibiting or preventing the transactions contemplated by this Section 9.1, or a period of 18 months has passed since the BellSouth Exercise Date, the rights and duties of the Company, the BellSouth Members and the AT&T Members under Section 9.1 shall immediately terminate.

For the purposes of this Section 9.1, the Fair Market Value of the Company's consolidated assets or of the BellSouth Members' Interests or of the Permitted Other Business shall be determined by the Members in the exercise of good faith and, in the event that the Members are unable to promptly determine such value, by the Dispute Procedure.

In the event a System Material Adverse Effect has occurred, the Members shall cause the Company to use its best efforts to remedy any damage or destruction relating to the System Material Adverse Effect. If a System Material Adverse Effect continues to exist on December 13, 2000, the option described in this Section 9.1 shall not be exercisable for a period of 270 days commencing on December 13, 2000. If a System Material Adverse Effect continues to exist at the termination of such 270-day period, the BellSouth Members may not elect any of the of the options set forth in clauses (a), (b) or (c) above until such time as a System Material Adverse Effect no longer continues to exist.

Pursuant to section 1.923(e) of the Commission's rules,¹ the Applicants state that a Commission grant of this application will not have a significant environmental effect, as defined by section 1.1307 of the Commission's rules.² A transfer of control does not involve any engineering changes and, therefore, cannot have a significant environmental impact.

¹ 47 C.F.R. § 1.923(e).

² Id. § 1.1307.

Response to Question 77:

As described in the Description of the Transaction, Public Interest Showing and Related Demonstrations ("Public Interest Statement") that also is attached to this Application, SBC Communications Inc. ("SBC") is one of the parties sharing control over the Transferee, Alloy LLC.

On November 5, 1999, a case entitled South Austin Coalition Community Council, et al. v. SBC Communications, Inc. and the company F/K/A Ameritech Corporation, No. 99 C 7232, was filed in the United States District Court for the Northern District of Illinois by six customers of Ameritech on behalf of a purported class of local telephone customers of Ameritech and SBC. Despite the decisions of both the Commission and the Department of Justice approving the merger,¹ the complaint alleges that the merger of SBC and Ameritech violates Section 7 of the Clayton Act² and seeks injunctive relief to unwind the merger altogether or to cause SBC to divest assets in various markets. Alloy LLC does not consider the allegations of this case to fall within the scope of disclosures required by Question 77 but is reporting this case out of an abundance of caution.

¹ In re Applications of Ameritech Corp. and SBC Communications Inc., Memorandum Opinion and Order, 14 FCC Rcd. 14712 (1999); United States v. SBC Communications, Civ. No. 99-0715, 1999 U.S. Dist. LEXIS 16789 (D.D.C. Aug. 2, 1999); Plaintiff's Motion for Entry of Final Judgment, id. (filed July 7, 1999).

² 15 U.S.C. § 18.